



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

GAIL FARBER, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

December 15, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

54 DECEMBER 15, 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**MEMORANDUM OF AGREEMENT BETWEEN LOS ANGELES COUNTY FLOOD CONTROL DISTRICT AND THE UNITED STATES ARMY CORPS OF ENGINEERS TO PROVIDE FUNDS TO COMPLETE A DEVIATION STUDY AT WHITTIER NARROWS DAM AND RESERVOIR AND COOPERATIVE AGREEMENT BETWEEN THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT AND THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA TO REIMBURSE THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT FOR THE COST OF THE DEVIATION STUDY
(SUPERVISORIAL DISTRICT 1)
(3 VOTES)**

SUBJECT

The proposed agreements will allow the Los Angeles County Flood Control District to provide funds to the United States Army Corps of Engineers to complete a deviation study which will allow a temporary higher water conservation pool at Whittier Narrows Dam and Reservoir and will memorialize the commitment of the Water Replenishment District of Southern California to reimburse the Los Angeles County Flood Control District for the deviation study to temporarily raise the water conservation pool and the update to the feasibility study to permanently raise the water conservation pool.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT:

1. Find that the proposed agreements with the United States Army Corps of Engineers and the Water Replenishment District of Southern California proposed herein are exempt from the California Environmental Quality Act.
2. Authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into a Memorandum of Agreement with the United States Army Corps of Engineers to provide funding to complete a deviation study at Whittier Narrows Dam and Reservoir to temporarily raise the water conservation pool.
3. Authorize the Chief Engineer of the Los Angeles County Flood Control District or her designee to enter into a Cooperative Agreement with the Water Replenishment District of Southern California for reimbursement of the Los Angeles County Flood Control District for the cost of the deviation study to temporarily raise the water conservation pool at Whittier Narrows Dam and Reservoir and update to the feasibility study to permanently raise the water conservation pool at Whittier Narrows Dam and Reservoir.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to find that the approval of the Memorandum of Agreement and the Cooperative Agreement are exempt from the California Environmental Quality Act (CEQA) and authorize the Chief Engineer of the Los Angeles County Flood Control District (LACFCD) or her designee to enter into a Memorandum of Agreement with the United States Army Corps of Engineers (USACE) and a Cooperative Agreement with the Water Replenishment District of Southern California (WRD) substantially similar in form and content to the Memorandum of Agreement and Cooperative Agreement enclosed herewith as Enclosures A and B. The purpose of the agreement is to provide funding for the USACE to complete a deviation study and to memorialize the reimbursement commitment from WRD for the deviation study and the update to the feasibility study to increase the water conservation pool at Whittier Narrows Dam and Reservoir.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provisions of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3) by maintaining a collaborative partnership with local agencies in order to increase water conservation of local storm water and reducing reliance on imported water thereby improving the quality of life for citizens of the County of Los Angeles (County).

FISCAL IMPACT/FINANCING

There will be no impact to the County General Fund.

The estimated cost of the Whittier Narrows Dam and Reservoir Deviation Study is \$75,000, and the cost of update of the Los Angeles County Drainage Area Water Conservation and Supply Whittier Narrows - Santa Fe Feasibility Study is \$300,000. WRD will reimburse the LACFCD for the project costs up to a maximum of \$375,000. Sufficient funds for this project are available in the Fiscal Year 2009-10 Flood Control District Budget.

The WRD through the Cooperative Agreement will reimburse the LACFCD \$375,000 for the cost of the deviation study and feasibility study. An amendment to the existing agreement between the USACE and the LACFCD will be executed to update the feasibility study after the deviation study is complete.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

WRD and LACFCD both support the conservation of local water supplies. The Whittier Narrows Dam and Reservoir owned and operated by the USACE provides a water conservation pool which is utilized to recharge groundwater in the Montebello Forebay at Rio Hondo Coastal Basin Spreading Grounds. The increase of the water conservation pool at Whittier Narrows Dam and Reservoir requires the USACE to perform a deviation study. The USACE's estimated cost to complete the study is \$75,000. If approved, the deviation study will allow an additional 1,000 acre feet of stormwater to be stored at Whittier Narrows Dam and Reservoir for a period of three years.

The USACE requires the Los Angeles County Drainage Area Water Conservation and Supply Whittier Narrows - Santa Fe Feasibility Study to be updated to permanently change the operation plan at Whittier Narrows Dam and Reservoir. Appropriations have already been requested for this task, and the matching local sponsor costs are estimated to be \$300,000.

The USACE requires the local sponsor, which is the LACFCD, to enter into a Memorandum of Agreement before accepting funds for the completion of the deviation study. The WRD, through the Cooperative Agreement, will reimburse the LACFCD \$375,000 for the cost of the deviation study and update to the feasibility study. An amendment to the existing agreement between the USACE and the LACFCD will be executed to update the feasibility study after the deviation study is complete.

ENVIRONMENTAL DOCUMENTATION

The approval to enter into a Memorandum of Agreement and Cooperative Agreement is exempt from the provisions of CEQA. This action meets the criteria set forth in Sections 15060(c)(2), 15061(b)(3), and 15306 of the CEQA guidelines.

The Honorable Board of Supervisors

12/15/2009

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IMPACT ON CURRENT SERVICES (OR PROJECTS)

The approval to enter into a Memorandum of Agreement and Cooperative Agreement will ultimately enhance groundwater recharge in the Central Groundwater Basin.

CONCLUSION

Please return one adopted copy of this letter to the Department of Public Works, Water Resources Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gail Farber".

GAIL FARBER

Director

GF:MP:abc

Enclosures

c: Chief Executive Office (Lari Sheehan)
County Counsel
Executive Office

MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND THE
LOS ANGELES FLOOD CONTROL DISTRICT
FOR ACCEPTANCE AND RETURN OF CONTRIBUTED FUNDS
FOR THE OPERATION OF THE
WHITTIER NARROWS FLOOD CONTROL PROJECT.

This MEMORANDUM OF AGREEMENT (hereinafter referred to as the "MOA"), entered into this day of [MONTH] , [YEAR], by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), represented by the Director of Civil Works, and the LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (hereinafter the "Contributor"), represented by the Chief Engineer

WITNESSETH THAT:

WHEREAS, the Whittier Narrows Flood Control Project (hereinafter referred to as the "Project") was authorized by **Section 3** of the **Flood Control Act of 1941 (PL 77-228)**; and

WHEREAS, the Contributor is a special district organized and operating under the provisions of the Los Angeles County Flood Control District Act, Water Code Uncodified Acts, Act 470 (Flood Control Act); and

WHEREAS, the Contributor is authorized by the Flood Control Act to control and conserve flood, storm, and other waste waters of said District and to conserve such waters for beneficial and useful purpose;

WHEREAS, the Contributor owns and operates the San Gabriel and Rio Hondo Coastal Basin Spreading Grounds (Spreading Grounds) situated downstream of Whittier Narrows Dam, on the San Gabriel and Rio Hondo Rivers, respectively, within the Central Basin; and

WHEREAS, the Contributor has requested that the Government approve a deviation from the water control plan for the Project to increase support for water conservation activities from elevation 201.6 feet National Geodetic Vertical Datum (NGVD) to 205 feet NGVD for a period of three years

WHEREAS, the Contributor considers it to be in its own interest to expedite the operation of the Project by voluntarily contributing funds (hereinafter referred to as Contributed Funds) to be used by the Government for that purpose; and

WHEREAS, the Government is authorized pursuant to 33 U.S.C. 701(h), to accept contributed funds, to be expended in connection with

Federally appropriated funds, for any authorized flood control work whenever such work and expenditure may be considered by the Secretary of the Army on recommendations of the Chief of Engineers to be advantageous in the public interest; and

WHEREAS, 33 U.S.C. 701(h) specifies that a non-federal entity requesting use of a Federal Flood Control Dam will provide the total amount of funds of the additional cost.

WHEREAS, Whittier Narrows Dam was identified as a Dam Safety Action class (DSAC) II dam in the Decisions and Outcomes Risk Informed Dam Safety Program Management Report, dated September 2006. A DSAC II rating indicates the dam is unsafe or potentially unsafe and urgent action is needed. The Corps of Engineers has mandated that there will be no raises to water conservation pools for DSAC II dams. The proposed deviation would not create a dedicated water conservation pool but rather a 1,100 acre-feet buffer pool with a top elevation of 205.0 feet, NGVD inside the flood control pool that could be utilized for water conservation purposes when weather conditions are favorable. The buffer pool could be quickly evacuated if the capacity is needed for flood control. As part of processing the deviation request, an evaluation to document the ephemeral nature of water conservation activities at Whittier Narrows Dam and an assessment of the risk of operating the dam to support water conservation above 201.6 feet, NGVD must be completed. Operating the dam to support water conservation beyond 201.6 feet, NGVD requires that the evaluation and assessment demonstrate that there is no quantifiable additional risk.

NOW, THEREFORE, the Government and Contributor agree as follows:

1. Subject to any necessary appropriation, the Contributor shall contribute to the Government seventy-five thousand dollars (\$75,000). These funds would cover the cost of an engineering seepage and piping evaluation, review of environmental documents, coordination with regulatory agencies, hydrologic data support and review, water management coordination and review, real estate review, and other necessary reviews and coordination activities necessary to complete the deviation study.

2. The contributions specified in paragraph 1 above shall provide the Government with the full amount of the required funds by delivering an electronic funds transfer to "FAO, USAED, SPL" to the District Engineer.

3. In the event that the Contributor contributes more or less than the amount listed in paragraph 1 above, this MOA shall apply to whatever funds are contributed by the Contributor to the Government pursuant to this MOA; however, the Government shall not obligate any contributed funds before they are received and available.

4. The Government shall use all Contributed funds for evaluating and reviewing submittals by the Contributor; managing data and information; and, studying or investigating changes to the operation

of the Project, except with regard to excess Contributed funds which are addressed in paragraph 8 of this MOA. The Contributor shall bear all additional costs of the work for which funds are accepted including any additional environmental compliance costs. The parties understand and agree that creating a buffer pool for the purpose of supporting water conservation activities is conditioned upon a favorable outcome of the dam safety evaluation and risk assessment report.

5. The Government shall provide the Contributor with quarterly accountings of its expenditures of Contributed funds for operation. The first such accounting shall be provided within 30 days after the final day of the first complete Government fiscal year quarter following receipt of the Contributed funds, and subsequent accountings shall be provided within 30 days after the final day of each succeeding quarter until the Contributed funds are completely expended or the Government concludes operation on the Project.

6. Unless directed in law, the Government shall not reimburse the Contributor for contributed funds expended by the Government.

7. Reserved.

8. The Government, subject to the availability of funds and subject to the approval by the Secretary of the Army, shall return to the Contributor contributed funds not expended by the Government.

9. Nothing herein shall constitute, or be deemed to constitute, an obligation of future appropriations by the United States.

10. Nothing herein shall constitute, or be deemed to constitute, an assurance or promise of the Government to take any action whatsoever with respect to the project, including but not limited to the following actions: entering into a Project Cooperation Agreement with the Contributor; constructing the Project; including the Project in the Government's budget; or completing the operation of the Project. The parties understand and agree that creating a buffer pool for the purpose of supporting water conservation activities is conditioned upon a favorable outcome of the dam safety evaluation and risk assessment report.

11. Before any party to this MOA may bring suit in any court concerning an issue relating to this MOA, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

12. The Contributor shall hold and save the Government free from all damages arising from the design, construction, operation, maintenance, repair, replacement, and rehabilitation of the Project

and any project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

12. Federal and State Laws. In the exercise of their respective rights and obligations under this MOA, the Contributor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

14. Relationship of Parties. In the exercise of their respective rights and obligations under this MOA, the Government and the Contributor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

15. Officials Not to Benefit. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this MOA, or to any benefit that may arise therefrom.

16. Notices.

a. Any notice, request, demand, or other communication required or permitted to be given under this MOA shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Contributor: Mr. Christopher Stone, Assistant Deputy Director
County of Los Angeles Department of Public Works
Water Resources Division
900 South Fremont Avenue
Alhambra, CA 91802-1460
Telephone: (626) 458-6100
Fax: (626) 979-5436

If to the Government: [FULL ADDRESS]

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this paragraph.

c. Any notice, request, demand, or other communication made pursuant to this paragraph shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven days after it is mailed.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day, month, and year first above written.

THE DEPARTMENT OF THE ARMY

THE LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT

By _____
Don T. Riley
Major General, USA
Director of Civil Works

By _____
Gail Farber
Chief Engineer

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
County Counsel

By _____
Deputy

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the Los Angeles County Flood Control District, that the Los Angeles County Flood Control District is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Los Angeles County Flood Control District in connection with the Whittier Narrows Flood Control Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the Los Angeles County Flood Control District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

[SIGNATURE]

[TYPED NAME]

[TITLE IN FULL]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF MOA SIGNATORY]

**[TYPED NAME]
[TITLE IN FULL]**

DATE: _____



**COOPERATIVE AGREEMENT
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**

This Cooperative Agreement (the "Agreement") is made and entered into this __ day of November, 2009 ("Effective Date"), by and between the Water Replenishment District of Southern California ("WRD") and the Los Angeles County Flood Control District ("LACFCD") (collectively referred to as "Parties" or individually as "Party") for the purposes stated herein.

RECITALS

WHEREAS, the County of Los Angeles is home to approximately 10 million residents who depend on reliable sources of water; and

WHEREAS, two-thirds of the water supply is imported from sources outside of the region; and

WHEREAS, in addition to imported water, the water supply also depends on groundwater that is recharged from a variety of sources, including storm flows; and

WHEREAS, LACFCD engages in multiple projects which are designed to address water supply, conservation and water quality issues throughout Los Angeles County; and

WHEREAS, through its various projects, LACFCD conserves approximately 150,000 acre-feet of local stormwater runoff each year; and

WHEREAS, WRD is a special district created pursuant to California Water Code, Section 60000, *et seq.*, adopted by the California legislature in 1955; and

WHEREAS, WRD has operated since 1959 to protect and preserve the quantity and quality of the groundwater supplies in the Central and West Coast Groundwater Basins, which serve as the source of nearly 40 percent of the water used by the four million people overlying the WRD's 420-square-mile service area; and

WHEREAS, WRD's mission includes managing and safeguarding the groundwater resources of the Central Basin by ensuring its water quality and by maximizing the amount of groundwater in the basins; and

WHEREAS, the Whittier Narrows Dam is owned and operated by the United States Army Corps of Engineers (“USACE”) and provides flood control, recreation and water conservation for Los Angeles County; and

WHEREAS, the Whittier Narrows Dam has provided a reliable means of capturing local stormwater flows which are later released and conserved in the LACFCD-operated Rio Hondo and San Gabriel River Spreading Grounds for groundwater replenishment purposes; and

WHEREAS, in an effort to maximize the local water supply using existing infrastructure, and to provide additional space for the capture of stormwater, WRD and LACFCD wish to increase the elevation of the Whittier Narrows Conservation Pool from 201.6 feet to 205 feet; thereby increasing the ability to conserve approximately 1,100 acre-feet of additional water for recharge into the groundwater basin annually, and thereby reducing the need to rely on expensive water imported into the area from the Sacramento and Colorado Rivers; and

WHEREAS, the increased elevation of the Whittier Narrows Conservation Pool will work in conjunction with the recharge basin percolation enhancement and equalization projects currently being undertaken by WRD and LACFCD to provide drought relief and long-term water supply benefits to the Los Angeles region; and

WHEREAS, USACE desires to implement high priority water conservation projects to address the unprecedented water supply shortage condition; and

WHEREAS, in order to temporarily operate the Whittier Narrows Conservation Pool at the 205 foot elevation for the 2009-2010 storm season, WRD will prepare, at its expense, a Deviation Request Package (a deviation from the current 201.6 foot pool elevation) for USACE approval, and in order to permanently operate at the new elevation USACE will prepare, with local cost-share provided by WRD, an update to the Whittier Narrows Dam Feasibility Study (“Feasibility Study”); and

WHEREAS, LACFCD has agreed to pay the estimated cost of Seventy Five Thousand Dollars (\$ 75,000.00) to USACE for its review and approval of the Deviation Request Package, and WRD has agreed to reimburse LACFCD for all such payments to USACE; and

WHEREAS, LACFCD has agreed to pay the estimated cost of Three Hundred Thousand Dollars (\$300,000.00) to USACE for the preparation and processing of the Feasibility Study update, and WRD has agreed to reimburse LACFCD for all such payments to USACE; and

WHEREAS, any reimbursement by WRD exceeding Seventy Five Thousand Dollars (\$75,000.00) for the Deviation Request Package, and/or exceeding Three Hundred Thousand Dollars (\$300,000.00), for the Feasibility Study update are subject to the approval of the Board of Directors of WRD; and

WHEREAS, approval from USACE to operate at the increased pool elevation in time for the 2009-2010 storm season would implement an immediate and reliable conservation vehicle to

provide drought relief for the Los Angeles region, and alleviate the long-term impact on the region's groundwater supply induced by ongoing drought.

NOW THEREFORE, in consideration of the mutual benefits derived by WRD and LACFCD, the Parties hereby agree as follows:

A. LACFCD AGREES:

1. To serve as a liaison to the USACE to facilitate the processing and review of the Deviation Request Package and the update of the Feasibility Study.
2. To draft and transmit a letter on behalf of the County of Los Angeles Flood Control District to the USACE requesting a temporary deviation from the approved Water Control Plan for the Whittier Narrows Dam for a period of three years. A deviation would allow temporary operation of the Conservation Pool at the proposed increased pool elevation while seeking approval for a permanent change to the operating plan.
3. To draft and transmit a letter, to the USACE, on behalf of the County of Los Angeles Flood Control District to request a permanent increase to the maximum conservation pool elevation at the Whittier Narrows Dam. Authorization by USACE will allow long term operation up to the increased pool elevation.
4. To work to amend its agreement with the USACE, to allow LACFCD to advance non-federal funding to USACE in the estimated amount of Three Hundred Thousand Dollars (\$300,000.00) for USACE staff to begin work on the Feasibility Study update while federal funds are being secured.
5. To keep WRD apprised of project requirements and progress, and copy WRD on correspondence with USACE relevant to this cooperative effort.

B. WRD AGREES:

1. To take the necessary action to complete and submit the Deviation Request Package to USACE for its review and approval.
2. To contract with an environmental services consultant ("Consultant") who is experienced with United States Army Corps of Engineers projects and is familiar with the requirements for completion of the Deviation Request Package and to administer and fund the Consultant's contract.
3. To complete and submit the Deviation Request Package to the USACE in a reasonable amount of time to obtain approval to temporarily operate at the increased pool elevation by January 31, 2010, or upon receiving authorization by USACE.

4. To pay to LACFCD Two Hundred Twenty Five Thousand Dollars (\$225,000.00) upon execution of this Agreement, of which Seventy Five Thousand Dollars (\$75,000.00) shall be used as reimbursement of amounts advanced by LACFCD to USACE for its review and preparation of the Deviation Request Package, and One Hundred Fifty Thousand Dollars (\$150,000.00) shall be used as reimbursement of amounts advanced by LACFCD to USACE for its preparation of the Feasibility Study update. WRD further agrees to pay LACFCD on July 1, 2010, the remaining One Hundred Fifty Thousand Dollars (\$150,000.00) to be used as reimbursement of the amounts advanced by LACFCD to USACE for its preparation of the Feasibility Study update.

C. IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. Term.

This Agreement is effective as of the Effective Date, and shall expire on December 31, 2012, or upon earlier termination by written notification from WRD or LACFCD. This Agreement shall be extended upon written notice by WRD that the Deviation Request Package or the Feasibility Study update has been delayed beyond the expected date of completion for reasons beyond the control of either Party.

2. Funding Mechanism.

This Agreement is intended as a funding mechanism to assist WRD in providing compensation to USACE for the preparation and review of the Deviation Request Package and the Feasibility Study update to increase the elevation of the Whittier Narrows Conservation Pool. Nothing in this Agreement is intended to transfer liability to WRD and/or the LACFCD for the manner of operation of the Whittier Narrows Conservation Pool. If the estimated USACE costs for its review of the Deviation Request Package and/or the preparation of the Feasibility Study are exceeded, WRD may elect to fund any additional costs to ensure the completion of these studies under the terms of this Agreement. Subject to the approval of the Secretary of the United States Army, the United States Government shall return any unexpended funds to LACFCD. LACFCD shall then remit said funds to WRD.

3. External Funding.

Parties agree to mutually support the other in seeking grant funding. Grant funding received by either of the Parties for the update of the Feasibility Study shall be applied toward reducing the local cost share as defined in the Agreement Between the United States of America and County of Los Angeles Department of Public Works, California for the Los Angeles County Drainage Area Water Conservation and Supply Study, California – Santa Fe Dam and Whittier Narrows Dams, adopted on November 8, 1994.

4. Operational Requirements.

In order to temporarily operate the Whittier Narrows Conservation Pool at the 205 foot elevation for the 2009-2010 storm season, a Deviation Request Package must be completed and approved by USACE, and permanent operation at the new elevation requires an update to the Whittier Narrows Dam Feasibility Study.

5. Feasibility Study.

After authorization by USACE of a deviation from the approved water control plan, the Parties shall work with USACE to expeditiously complete an update of the Feasibility Study as required to secure the USACE's approval for a change to the long-term water control plan for the Whittier Narrows Dam.

6. Applicability of Work Results with Respect to Long-term Goal.

To the maximum extent practicable, results of work performed and materials prepared for the completion of the Deviation Request Package (short-term goal) shall be applied toward satisfying the requirements of the Feasibility Study update. Wherever applicable, the results and cost value of in-kind deviation request components shall be credited toward the overall work requirements, and associated local cost share requirement, for completion of the Feasibility Study update, and toward achieving approval for a long-term operating plan. The conditions in this Section are contingent upon the USACE's decision to permit the work performed in completion of the Deviation Request Package to be credited toward satisfying the requirements of the Feasibility Study update.

7. Environmental Liability.

The Parties agree that this Agreement shall serve only as a funding agreement between the Parties, and shall not form the basis of any finding of environmental liability.

8. Compliance with Applicable Laws.

Parties shall comply with all laws and regulations applicable to the performance of the work hereunder, including but not limited to, the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). WRD is the lead agency for purposes of CEQA and will comply with all requirements as such. USACE shall serve as the lead agency for purposes of NEPA. A Party's failure to comply with any law(s) or regulation(s) applicable to the performance of the work specified in Sections A, B and C(4) hereunder shall constitute a breach of this Agreement.

9. Choice of Law and Venue.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The Parties agree that the exclusive venue for any action or proceeding arising from or relating to this Agreement shall be in the County of Los Angeles, State of California.

10. Notices.

All notices provided by this Agreement shall be in writing and shall be sent by first-class mail and facsimile transmission as follows:

If to WRD:

Robb Whitaker, General Manager
Water Replenishment District of Southern California
4040 Paramount Blvd.
Lakewood, CA 90712
Phone: (562) 921-5521
Fax: (562) 921-6101

If to LACFCD:

Christopher Stone, Assistant Deputy Director
County of Los Angeles Department of Public Works
Water Resources Division
900 South Fremont Avenue
Alhambra, CA 91802-1460
Phone: (626) 458-6100
Fax: (626) 979-5436

11. Amendments.

This Agreement may be modified only by a writing signed by the Parties hereto.

12. Integration; Construction.

This Agreement sets forth the final, complete and exclusive expression of the Parties' agreement and supersedes any and all other agreements, representations, and promises, whether made orally or in writing with respect to the subject matter hereof,. The Parties represent and warrant that they are not entering into this Agreement based upon any representation or understanding that is not expressly set forth in this Agreement. This Agreement shall be construed as the product of a joint effort between the Parties and shall not be construed against either Party as its drafter.

13. Prior Agreements.

This Agreement shall not affect the rights or obligations of the Parties contained in any other agreements formally entered into by the Parties.

14. Authority.

Each person signing this Agreement represents that he or she has the authority to do so on behalf of the Party for whom he or she is signing.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed the day and year first above written.

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

Signature

Albert Robles

Print Name

President, Board of Directors

Title

Signature

Lillian Kawasaki

Print Name

Secretary, Board of Directors

Title

Approved As To Form:

MEYERS, NAVE, RIBACK, SILVER & WILSON

James M. Casso

Attorneys for the Water Replenishment
District of Southern California

**LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT**

APPROVED AS TO FORM:

COUNTY OF LOS ANGELES

Signature

Gail Farber

Print Name

Chief Engineer

Title

Robert E. Kalunian
County Counsel

1320857.2

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